EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee was assigned the following responsibilities:

- Receive annual reports from the Board of Trustees of the Teachers' Fund for Retirement (TFFR) regarding the annual test of actuarial adequacy of the TFFR statutory contribution rates. (North Dakota Century Code Section 15-39.1-10.11)
- Study the feasibility and desirability of the Public Employees Retirement System (PERS) entering a separate contract for prescription drug coverage under the uniform group insurance program. The Legislative Management may contract with a private third party to assist in conducting the study and identifying pros and cons relating to a carve-out for prescription drug coverage under the uniform group insurance program. (Section 3 of House Bill No. 1374 (2019))
- Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans. (Section 54-35-02.4)
- Receive periodic reports from the Office of Management and Budget (OMB) Human Resource Management Services Division on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. (Section 54-06-31)
- Receive a biennial report from OMB summarizing reports of state agencies providing service awards to employees in the classified service. (Section 54-06-32)
- Receive a biennial report from OMB summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service. (Section 54-06-33)
- Receive a biennial report from OMB summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state. (Section 54-06-34)
- Approve terminology adopted by the Board of Trustees of the TFFR to comply with applicable federal statutes or rules. (Section 15-39.1-35)
- Receive notice from the Board of Trustees of the TFFR of any necessary or desirable changes in statutes relating to the TFFR. (Section 15-39.1-05.2)
- Approve terminology adopted by the PERS Board to comply with federal requirements. (Sections 39-03.1-29, 54-52-23, and 54-52.1-08.2)
- Receive notice from firefighters relief associations of each association's intent to provide a substitution monthly service pension. (Section 18-11-15)

Committee members were Representatives Mike Lefor (Chairman), Jason Dockter, LaurieBeth Hager, Craig Johnson, Vernon Laning, Matthew Ruby, and Austen Schauer and Senators Howard C. Anderson, Jr., Brad Bekkedahl, Dick Dever, Karen K. Krebsbach, Richard Marcellais, and Kristin Roers.

BACKGROUND

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. Under Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs and health and retiree health plans of public employees. Section 54-35-02.4 also requires the committee take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval and to include in the report of the committee a statement that the proposal would allow future changes without legislative involvement.

The committee may solicit draft measures from interested persons during the interim and is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review. A copy of the committee's report must accompany any measure or amendment affecting a public employee's retirement program, health plan, or retiree health plan which is introduced during a legislative session. The statute provides any legislation enacted in contravention of these requirements is invalid, and benefits provided under that legislation must be reduced to the level in effect before enactment.

Teachers' Fund for Retirement

Chapter 15-39, which was repealed in 1971, established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by Section 15-39.1-03, provided a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 at which time TFFR was established with the enactment of Chapter 15-39.1.

The Teachers' Fund for Retirement became effective July 1, 1971, and is governed by its board of trustees. The State Investment Board is responsible for the investment of the trust assets, although the TFFR Board of Trustees establishes the asset allocation policy. The Retirement and Investment Office is the administrative agency for TFFR. The Teachers' Fund for Retirement is a qualified governmental defined benefit retirement plan.

All certified teachers of a public school in the state participate in TFFR, including supervisors, principals, and administrators. Noncertified employees, such as instructional aides, facility maintenance, secretaries, and drivers, are not allowed to participate in TFFR. Eligible employees become members on the date of employment.

The district or other employer that employs a member contributes a percentage of the member's salary. This percentage consists of a base percentage of 7.75 percent, plus additions. Effective July 1, 2008, the employer contribution rate became 8.25 percent; effective July 1, 2010, the employer contribution rate became 8.75 percent; effective July 1, 2012, the employer contribution rate became 10.75 percent; and effective July 1, 2014, the employer contribution rate became 12.75 percent. However, the employer contribution rate will revert to 7.75 percent when TFFR is 100 percent funded on an actuarial basis. The contribution rate will not increase automatically if the funded ratio later falls below 100 percent.

Before July 1, 2012, all active members contributed 7.75 percent of salary per year to TFFR. The employer may "pick up" the member's contributions under the provisions of Internal Revenue Code Section 414(h). The member contribution rate was increased from 7.75 to 9.75 percent effective July 1, 2012, and increased to 11.75 percent effective July 1, 2014. The 4 percent added to the member contribution rate will remain in effect until TFFR is 100 percent funded on an actuarial basis. At that point, the member contribution rate will revert to 7.75 percent. The member's total earnings are used for salary purposes, including overtime and nontaxable wages under a Section 125 plan, but excluding certain extraordinary compensation, such as fringe benefits or unused sick or vacation leave.

Members who joined TFFR by June 30, 2008, are Tier 1 members, while members who join after that date are Tier 2 members. Final average compensation, for purposes of determining retirement benefits, is the average of the member's highest 3 plan-year salaries for Tier 1 members or 5 plan-year salaries for Tier 2 members. Monthly benefits are based on one-twelfth of this amount. Tier 1 members are eligible for a normal service retirement benefit at age 65 with credit for 3 years of service, or if earlier, if the sum of the member's age and years of service is at least 85. Effective June 30, 2013, Tier 1 members who are at least age 55 and vested--3 years of service--as of the effective date, or if the sum of the member's age and service is at least 65, are eligible for normal service retirement benefits and are grandfathered. Those who do not meet these criteria as of June 30, 2013, may retire upon normal retirement on or after age 65 with credit for 3 years of service, or earlier, if the sum of the member's age is at least 90, with a minimum age of 60. A Tier 2 member may retire upon normal retirement on or after age 65 with credit for 5 years of service, or earlier, if the sum of the member's age and years of service is at least 90. Effective July 1, 2013, Tier 2 members may retire upon normal retirement on or after age 65 with credit for 5 years of service, or earlier, if the sum of the member's age and service is at least 90, with the added requirement that the member has reached a minimum age of 60.

The monthly retirement benefit is 2 percent of final average monthly compensation times years of service. Benefits are paid as a monthly life annuity, with a guarantee if the payments made do not exceed the member's contributions plus interest, determined as of the date of retirement, the balance will be paid in a lump sum to the member's beneficiary.

To receive a death benefit, death must occur while being an active, inactive, or a nonretired member. Upon the death of a nonvested member, a refund of the member's contributions and interest is paid. Upon the death of a vested member, the beneficiary may elect the refund benefit or a life annuity of the normal retirement benefit "popping-up" to the original life annuity based on final average compensation and service as of the date of death, but without applying any reduction for the member's age at death.

A Tier 1 member leaving covered employment with less than 3 years of service and a Tier 2 member leaving covered employment with less than 5 years of service is eligible to withdraw or receive a refund benefit. Optionally, a vested member may withdraw the member's contributions plus interest in lieu of the deferred benefit otherwise due. A member who withdraws receives a lump sum payment of the member's employee contributions plus interest credited on these contributions. Interest is credited at 6 percent per year.

At times, the law relating to TFFR retirement benefits has been amended to grant certain postretirement benefit increases. However, TFFR has no automatic cost-of-living increase features.

Public Employees Retirement System

The Public Employees Retirement System is governed primarily by Chapters 54-52, 54-52.1, 54-52.2, 54-52.3, and 54-52.6. The PERS retirement benefits include the defined contribution (DC) plan and the defined benefit plan, the retiree health insurance credit (RHIC), and the 457 deferred compensation plan. The PERS insurance plans include health insurance for active and retired members, life insurance, dental insurance, vision insurance, and long-term care insurance.

The retirement system is supervised by the PERS Board and covers most public employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1971, may choose to be members. Officials appointed to office after that date are required to be members. Most North Dakota Supreme Court justices and district court judges are members of the plan but receive benefits that differ from other members. A county, city, or school district may choose to participate on completion of an employee referendum and on execution of an agreement with the PERS Board. Political subdivision employees are not eligible to participate in the DC retirement plan.

The PERS main system defined benefit plan is funded from employer contributions, employee contributions, and investment earnings. Contributions are calculated based on a percentage of gross pay. The defined benefit program is provided through the combined PERS fund--PERS main system, the judges' retirement system, the public safety system with prior PERS main system service, and the public safety system without prior PERS main system service--Highway Patrolmen's retirement system, and Job Service North Dakota retirement plan (Job Service).

Retirement Tiers

Receipt of retirement benefits is based on two dates establishing three tiers of retirement benefits for members under the combined PERS fund--January 1, 2016, and January 1, 2020. The three retirement benefits that vary based on the date of initial hire are the normal retirement age, final average salary multiplier, and receipt of the RHIC.

There are two normal retirement ages for retirement plan members:

- **Rule of 85** - Members of the PERS main system and judges' retirement system are eligible for a normal service retirement benefit at age 65 or when age plus years of service is equal to at least 85. Members of the public safety retirement system are eligible for a normal service retirement at age 55 and 3 eligible years of service or when age plus service is equal to at least 85.
- **Rule of 90 and minimum age of 60** - Members of the PERS main system first enrolled after December 31, 2015, are eligible for a normal service retirement benefit at age 65 or when age plus years of service is equal to at least 90 and the member attains a minimum age of 60.

There are two retirement benefit final average salary multipliers for retirement plan members:

- **2 percent and judges** - Members of the PERS main and public safety systems enrolled before January 1, 2020, have a retirement benefit calculated based on 2 percent of final average salary multiplied by years of service. The retirement benefit for a member of the judges' retirement system is 3.50 percent of final average salary for the first 10 years of service, 2.80 percent for each of the next 10 years of service, and 1.25 percent for service in excess of 20 years.
- **1.75 percent** - Members of the PERS main and public safety systems enrolled after December 31, 2019, have a retirement benefit calculated based on 1.75 percent of final average salary multiplied by years of service.

There are two classes of RHIC recipients for retirement plan members:

- **RHIC** - Members of the PERS main and public safety systems first enrolled before January 1, 2020, receive an RHIC.
- **No RHIC** - Members of the PERS main and public safety systems first enrolled after December 31, 2019, do not receive an RHIC.

Surviving Spouse Retirement Benefits

The surviving spouse of a PERS member may be eligible for benefits under the retirement system. The surviving spouse who is the sole refund beneficiary of a deceased member of the PERS main system or public safety system who had accumulated at least 3 years of service before normal retirement is entitled to elect one of four forms of preretirement death benefits. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary only may choose a lump sum distribution of the accumulated balance. The preretirement death benefit may be a lump sum payment of the member's accumulated contributions with interest; 50 percent of the member's accrued benefit, not reduced on account of age, payable for the surviving spouse's lifetime; a continuation portion of a 100 percent joint and survivor annuity, only available if the participant was eligible for normal retirement; or a partial lump sum payment in addition to one of the annuity options. The surviving spouse of a deceased member of the judges' retirement system who had accumulated at least 5 years of service is entitled to elect one of two forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contribution with interest or 100 percent of the member's accrued benefit, not reduced on account of age, payable for the spouse's lifetime. For members who are neither vested nor have a surviving spouse, the benefit is a lump sum payment of the member's accumulated contributions with interest.

Retirement Benefits

The standard form of payment for members of the PERS main and public safety systems is a monthly benefit for life with a refund to the beneficiary at death of the remaining balance, if any, of accumulated member contributions. The standard form of payment for members of the judges' retirement system is a monthly benefit for life, with 50 percent payable to an eligible survivor. The final average salary is the average of the highest salary received by a member for any 36 months employed during the last 180 months of employment.

Retirement System Contributions

Except for the employer contribution rate for the public safety system plans, contribution rates are specified by statute. For the PERS main system, from 1977 through 1989, the employer contribution was 5.12 percent of state employee salaries and the employee contribution was 4 percent. In lieu of state employee salary increases in 1983 and 1984, the state began to pay the 4 percent employee contribution. In 1989, the employer contribution was reduced by 1 percent and reallocated for an RHIC. In 2012, 2013, and 2014, the employer and employee contributions were each increased 1 percent each year.

The January 1, 2014, increase is scheduled to revert to the contribution rates in effect on July 1, 2013, following the first valuation of the PERS main system showing a ratio of the actuarial value of assets to the actuarial accrued liability of the PERS main system which is equal to or greater than 100 percent. The 2019 Legislative Assembly terminated the RHIC for new hires and the 1.14 percent was reallocated with the effect being for new hires the employer contribution increased by 1.14 percent to 8.26 percent.

1989 Through December 31, 2011		Effective January 1, 2012		Effective January 1, 2013		Effective January 1, 2014	
Employer	**Employee**	**Employer**	**Employee**	**Employer**	**Employee**	**Employer**	**Employee**
4.12%	4.00%[1]	5.12%	5.00%[1]	6.12%	6.00%[1]	7.12%[2]	7.00%[1]

[1]The state pays 4 percent of the employee share of retirement contributions.

[2]Senate Bill No. 2046 (2019) reallocated the 1.14 percent employer contribution for the RHIC to the main system defined benefit retirement plan for employees hired after December 31, 2019, resulting in a total employer contribution rate of 8.26 percent for employees hired after December 31, 2019.

Retiree Health Insurance Credit Fund

The 1989 Legislative Assembly established an RHIC fund with the purpose of prefunding hospital benefits coverage; medical benefits coverage; prescription drug coverage under any health insurance program; and dental, vision, and long-term care benefits coverage under the uniform group insurance program for retired members of PERS and the Highway Patrolmen's retirement system receiving retirement benefits or surviving spouses of those retired members who have accumulated at least 10 years of service. The fund provides a monthly credit for health insurance benefits of $5 multiplied by the retired members' years of service.

The employer contribution under PERS was reduced by 1 percent of the monthly salaries or wages of participating members, including participating judges, and the money was redirected to the RHIC fund. The 2009 Legislative Assembly increased the employer contribution to 1.14 percent of the monthly salaries or wages of participating members. The 2019 Legislative Assembly closed the program for new hires after December 31, 2019.

ACTUARIAL REPORTS

Teachers' Fund for Retirement

The committee received annual actuarial valuation reports on TFFR dated July 1, 2019, and July 1, 2020. The primary purposes of the valuation report are to report the TFFR's actuarial assets, calculate TFFR's liabilities, determine the funding policy actuarially determined contribution for fiscal year 2021 and compare to the statutory employer contribution, determine the effective amortization period, explore the reasons why the current valuation differs from the prior valuation, and provide information for annual financial statements. In addition, the report provides information required by TFFR in connection with the Governmental Accounting Standards Board (GASB) Statement Nos. 67 and 68, the standards that set the accounting rules for public retirement systems and the employers that sponsor or contribute to these plans. Valuations are prepared annually, as of July 1 of each year, the first day of TFFR's plan and fiscal year.

Effective with the July 1, 2013, actuarial valuation, the TFFR Board of Trustees adopted an actuarial funding policy that provides direction on how to calculate an actuarially determined contribution. To determine the adequacy of the 12.75 percent statutory employer contribution rate, the rate is compared to the actuarially determined contribution. The actuarially determined contribution is equal to the sum of the employer normal cost rate and the level percentage of pay required to amortize the unfunded actuarial accrued liability over a 30-year closed period that began July 1, 2013. For this calculation, payroll is assumed to increase 3.25 percent per year. As of July 1, 2020, the actuarially determined contribution is 13.19 percent of payroll, compared to 12.84 percent on July 1, 2019. Therefore, the statutory employer contribution rate of 12.75 percent resulted in a contribution deficiency of .44 percent of payroll as of July 1, 2020.

As of June 30, 2019, the actuarial value of assets was $2.75 billion, representing 103.6 percent of the market value of assets of $2.65 billion. This 103.6 percent falls within the 20 percent corridor, so no further adjustment to the actuarial value of assets is necessary. Guidelines in Actuarial Standard of Practice Statement No. 44, selection and use of asset valuation methods for pension valuations, recommends asset values fall within a reasonable range around the corresponding market value. The actuarial asset method complies with these guidelines.

For the year ending June 30, 2020, the consulting actuary determined the asset return on a market value basis was 3.3 percent. After gradual recognition of investment gains and losses under the actuarial smoothing method, the actuarial rate of return was 6.2 percent, which represents an experience loss when compared to the assumed rate of 7.75 percent. Based on the actuarial value of assets, the funded ratio decreased to 65.7 percent, compared to 66.0 percent as of July 1, 2019. The net pension liability increased from $1,377,253,104 as of June 30, 2019, to $1,530,503,462 as of June 30, 2020.

The fund's cashflow (contributions minus benefit payments, refunds, and expenses) as a percentage of the market value of assets is a deficiency of 2.0 percent as of June 30, 2020, compared to a deficiency of 1.9 percent as of June 30, 2019. This decrease in net cashflow primarily is due to the growth of benefit payments and expenses. It is not unusual for a mature pension system to operate with minor negative cashflow as returns on investments generally exceed the net cash outflow and assets continue to rise; however, as the degree of negative cashflow increases, the plan's vulnerability to investment market volatility increases.

As of July 1, 2020, the fund had 11,347 active members, 1,715 inactive vested members, 1,132 inactive nonvested members, and 9,036 retirees and beneficiaries. Plan costs are affected by the age, years of service, and compensation of active members. The average age of active members was 41.8 years, and active members have 11.7 average years of service. Average compensation for active members was $60,893. As of July 1, 2020, 8,218 retirees and 818 beneficiaries were receiving total monthly benefits of $19,116,138 with the average monthly benefit amount for the retirees and beneficiaries being $2,116.

Public Employees Retirement System

The committee received annual actuarial valuation reports as of July 1, 2019, and of July 1, 2020, on the following PERS funds:

- Combined PERS fund:
  - PERS main system;
  - Judges' retirement fund;
  - Public safety system with prior PERS main system service; and
  - Public safety system without prior PERS main system service;
- Highway Patrolmen's retirement system;
- RHIC fund; and
- Job Service.

The actuarial valuations are performed to determine whether the assets and statutory contributions are anticipated to be sufficient to provide the prescribed benefits. The purpose of the actuarial valuations is to determine whether the contribution is sufficient to meet the long-term obligations to the members covered by the funds in accordance with the benefit provisions of the funds.

Plan Funding

The statutory or approved employer and employee contribution rates for fiscal year 2021 are:

	Employee Rate	Employer Rate
PERS main system	7.00%	7.12%
Judges' retirement system	8.00%	17.52%
Public safety system with prior PERS main system service	5.50%[1]	9.81%
Public safety system without prior PERS main system service	5.50%	7.93%
Highway Patrolmen's retirement system	13.30%	19.70%
RHIC[2]	0%	1.14%
Job Service	7.00%	0%[3]

[1]Employee contribution rate for Bureau of Criminal Investigation is 6.00 percent.

[2]RHIC rate for members first enrolled after December 31, 2019, is made to the Main system for Main system members and to the DC system for DC system members.

[3]Due to the overfunded status of the Job Service fund, an employer contribution is not required.

The comparison of total--employer and employee--statutory or approved contribution rates and the total actuarial contribution rates for fiscal year 2021 are:

	Actuarial Contribution Rate	Statutory/Approved Contribution Rate	Statutory Rate Excess - Deficiency
PERS main system	19.94%	14.12%	(5.82%)
Judges' retirement system	16.81%	25.52%	8.71%
Public safety system with prior PERS main system service	14.87%	15.31%	.44%
Public safety system without prior PERS main system service	13.22%	13.43%	.21%
Highway Patrolmen's retirement system	37.07%	33.00%	(4.07%)
RHIC	1.11%	1.14%	0.03%

The following is a comparison of this year's total actuarial contribution rates to last year's rates:

	Fiscal Year 2020	Fiscal Year 2021
PERS main system	19.22%	19.94%
Judges' retirement system	10.83%	16.81%
Public safety system with prior PERS main system service	13.54%	14.87%
Public safety system without prior PERS main system service	11.87%	13.22%
Highway Patrolmen's retirement system	42.68%	37.07%
RHIC	1.02%	1.11%

Demographics

The following demographic data was reported for active members as of July 1, 2020:

Category	Year Beginning July 1, 2020
PERS main system	
Number of active members	23,487
Average age	46.3
Average service credit	9.5
Total compensation	$1,103,120,694
Average compensation	$46,967
Judges' retirement system	
Number of active members	57
Average age	56.4
Average service credit	9.5
Total compensation	$8,438,678
Average compensation	$148,047
Public safety system with prior PERS main system service	
Number of active members	745
Average age	36.4
Average service credit	6.1
Total compensation	$45,383,846
Average compensation	$60,918
Public safety system without prior PERS main system service	
Number of active members	200
Average age	37.6
Average service credit	4.2
Total compensation	$10,824,717
Average compensation	$54,124

Category	Year Beginning July 1, 2020
Combined PERS fund	
Number of active members	24,489
Average age	45.9
Average service credit	9.3
Total compensation	$1,167,767,935
Average compensation	$47,685
Highway Patrolmen's retirement system	
Number of active members	154
Average age	37.7
Average service credit	10.7
Total compensation	$11,409,711
Average compensation	$74,089
Job Service	
Number of active members	5
Average age	65.1
Average service credit	44.2
Total compensation	$314,607
Average compensation	$62,921
RHIC	
Number of active members	23,495
Average age	46.3
Average service credit	9.8
Total compensation	$1,139,970,530
Average compensation	$48,520

Funding Ratio

The following is a comparison of this year's actuarial funded radio to last year's ratio:

	July 1, 2019		July 1, 2020	
	Unfunded Actuarial Liability	Funded Ratio	Unfunded Actuarial Liability	Funded Ratio
PERS main system	$1,186,285,938	71.3%	$1,444,758,987	68.3%
Judges' retirement system	($10,630,281)	123.9%	($7,017,349)	113.7%
Public safety system with prior PERS main system service	$12,688,303	84.0%	$19,198,946	80.0%
Public safety system without prior PERS main system service	($885,903)	109.8%	($115,903)	100.9%
Highway Patrolmen's retirement system	$25,412,734	76.1%	$34,408,702	71.2%
RHIC	$80,229,255	63.2%	$81,226,983	64.6%
Job Service	($31,508,776)	147.5%	($32,739,941)	151.0%

PHARMACY BENEFITS STUDY

Section 3 of House Bill No. 1374 provided for the study of the feasibility and desirability of PERS entering a separate contract for prescription drug coverage under the uniform group insurance program. The study charge authorized the Legislative Management to contract with a private third party to assist in conducting the study and identifying pros and cons relating to a carve-out for prescription drug coverage under the uniform group insurance program.

Legislative History

As introduced, House Bill No. 1374 would have required the PERS uniform group insurance program to receive its pharmacy benefits management (PBM) services though the Department of Human Services Medical Assistance program. As amended by the House, the services would have been permissive instead of mandatory, and as amended by the Senate, the bill no longer addressed PERS. However, the conference committee adopted amendments to address PERS prescription drug coverage.

Section 1 of the bill requires the Department of Human Services to establish a pharmacy management program for Medicaid Expansion prescription drug coverage. This section does not address PERS.

Section 2 of the bill addresses PERS, providing:

- Except for Medicare Part D, PERS may not enter or renew a contract for prescription drug coverage unless the contract authorizes PERS to conduct a performance audit of the prescription drug coverage and related PBM services. This provision also specifies required contract provisions.
- PERS shall use an independent auditor and provides the auditor, the Insurance Department, and the Employee Benefits Programs Committee may access any information PERS may access.

- If PERS contracts directly with a PBM or provides prescription drug coverage through a self-insurance plan, the contract must require the PBM to disclose to PERS all rebates and any other fees that provide the PBM with sources of income under the contract.

In conference committee testimony indicated support to have a Legislative Management study conducted with the assistance of a consultant to consider the pros and cons of PERS carving out drug benefits from the medical benefits.

Background

Century Code

The PERS uniform group insurance program is created under Section 54-52.1-02, which provides the program must provide hospital benefits coverage, medical benefits coverage, and life insurance benefits coverage. Although prescription drug coverage generally is considered part of medical benefits coverage, the law authorizes the program to include multiple subgroups of benefits, including prescription drug coverage.

In bidding for uniform group insurance, Section 54-52.1-04(1) authorizes the PERS Board to receive bids separately for all or parts of the prescription drug benefits coverage component of medical benefits coverage. In accepting a bid, the board must act to best serve the interests of the state and the state's eligible employees, including consideration of the economy to be effected, the ease of administration, the adequacy of the coverage, the financial position of the carrier, and the reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

Under Section 54-52.1-04(3), the health benefits coverage may be provided through a fully insured health insurance plan, a health maintenance organization, or a self-insurance health plan. Furthermore, Section 54-52.1-04.2(1) makes it clear PERS may carve out prescription drug benefits coverage and provide coverage through a fully insured health insurance plan or through a self-insurance health plan.

Uniform Group Insurance Program Health Benefits Coverage

Senate Bill No. 176 (1963), codified as Chapter 52-12, authorized a state agency, alone or in conjunction with another state agency, to enter a group hospitalization and medical care plan and group life insurance. The intent was "to promote the economy and efficiency of employment in the state's service by making available hospitalization and medical care and group life insurance protection to state employees and their families, thereby enabling the employees to care for themselves and their dependents in times of accident or illness, and which by its protection will improve state employment within the state, reduce excessive personnel turnover and offer suitable attraction to high grade men and women to enter the service of state employment."

House Bill No. 1093 (1971) repealed Chapter 52-12 and created Chapter 54-52.1, which created the PERS uniform group insurance program, the basis for the current program. Beginning in the mid-1970s and continuing until 1983, PERS contracted for a fully insured health plan. From 1983 to 1989, PERS provided the health care benefits through a self-insurance health plan. From 1989 to the present, PERS has contracted for a hybrid fully insured health plan. The hybrid plan provides for profit sharing and until 2015 also provided for loss sharing.

The PERS health benefits contract last went out to bid in 2014, at which time PERS entered a 2-year contract for the 2015-17 biennium. The Public Employees Retirement System renewed the contract for the 2017-19 and 2019-21 bienniums. The contract went out to bid the summer of 2020 for the 2021-23 biennium.

Historically, under the PERS uniform group insurance health benefits, pharmacy benefits have been bundled with medical benefits. However, in preparation for the 2014 health benefits plan request for proposal, PERS considered unbundling the pharmacy benefits, providing the pharmacy benefits under a self-insurance health plan. In the course of researching the concept of unbundling, PERS concluded it was unclear as to whether Section 54-52.1-04.2 authorized PERS to unbundle the pharmacy benefits from the medical benefits.

As a result of PERS interpretation of Section 54-52.1-04.2, House Bill No. 1028 (2019), recommended by the 2017-18 interim Health Care Reform Review Committee, and Senate Bill No. 2045 (2019), introduced by PERS, were passed. These bills amended Section 54-52.1-04.2 to clarify pharmacy benefits may be unbundled and provided through a self-insurance health plan and the circumstances under which PERS may move to a self-insurance health plan.

Health Care Reform Review Committee

During the 2017-18 interim, by Legislative Management directive, the Health Care Reform Review Committee studied the public employee health benefits plan, including the feasibility and desirability of transitioning to a self-insurance plan. The study was required to include a review of the current plan and consideration of the costs and benefits of the current plan compared to the costs and benefits of a self-insurance plan.

As part of this study, the committee received testimony from a representative of Pharmacy Benefit Consultants (PBC) regarding pharmacy benefits coverage under the PERS health benefits program. The presentation addressed why health plans do not control prescription coverage costs and how to fix this problem. Pharmacy Benefit Consultants testified PERS provides pharmacy benefits for its main plan through a bundled plan. Pharmacy Benefit Consultants testified virtually all bundled contracts:

- Are entirely devoid of specific drug pricing terms and guarantees or meaningful rebate guarantees;
- Are entirely devoid of specific terms related to core matters that impact drugs' costs, such as the formulary and prior authorization, step therapy, and quantity limit programs;
- Allow the medical provider and pharmacy provider to arrange their structure, with potential hidden fees and "profit spreads" for both entities; and
- If the medical provider is integrated vertically with subsidiary hospitals or pharmacies, allow the medical provider to steer use to its subsidiaries, which may be higher cost.

Additionally, PBC testified most bundled contracts allow the medical provider and pharmacy provider to move drugs between the medical side and the PBM side. The same drugs can have very different costs based on whether the drug is invoiced on the medical side or the PBM side. On the medical side, drugs costs often are entirely unknown; whereas, on the PBM side, payers can determine the list price of each drug and if payers obtain claims data, can determine the discount provided.

Pharmacy Benefit Consultants testified virtually all carved out coverage is self-insured coverage provided by PBMs. Pharmacy Benefit Consultants testified unless PERS can obtain a bundled contract that pins down drug pricing terms and guarantees, and gives the state real control over numerous other core matters that impact cost, which is highly unlikely, PERS should carve out its prescription drug coverage.

Pharmacy Benefit Consultants testified to control drug costs, a health plan must ensure it has a PBM contract free of all loopholes and then take control of all matters. After obtaining a loophole-free PBM contract, PERS needs to exercise its contract rights by:

- Obtaining net cost information for key drugs;
- Customizing its formulary;
- Customizing its programs;
- Exercising its rights to renegotiate retail and mail guarantees on an annual basis, and specialty drug guarantees on a quarterly basis; and
- Exercising its carve-out right for any specialty drugs if the PBM is overcharging for any specialty drugs.

Additionally, PBC testified once PERS has a loophole-free PBM contract, PERS needs to monitor and respond to marketplace changes to:

- Analyze and determine which new-to-market drugs to cover;
- Track brand drugs that lose patent protection and require plan beneficiaries to use chemically identical generic drugs when they become available;
- Track new biologic drugs, compare the net costs of the brands and biologics, and steer use to the lowest cost drugs; and
- Track large increases in drugs prices and stop covering those with alternative lower-cost replacements.

To accomplish the PBC recommendations, PBC suggested PERS either retain a clinical and financial expert in house or retain third-party consulting with the necessary expertise.

Although the committee did not make any specific recommendations regarding whether PERS should unbundle its prescription drug benefits or transition to a self-insurance health plan, the committee recommended House Bill No. 1028, which updated the PERS self-insurance health plan law and clarified the Insurance Commissioner has regulatory authority over a self-insurance health plan. The updates in the law include clarification prescription drug benefits may be unbundled and provided through a self-insurance health plan and provide PERS may transition to a self-insurance health plan if PERS determines the self-insurance health plan best serves the interests of the state and the state's eligible employees.

Consultant Report

The committee contracted with Deloitte Consulting, LLP to conduct a study of some advantages and disadvantages of PERS entering a separate prescription drug contract under the uniform group insurance program.

Study Format

The study included a review of the market forces and structural constraints that will factor into any decision the state makes to pursue a carve-out prescription drug program. These topics were summarized into the following five primary sections, with considerations for a prescription drug carve-out included within each section:

1. Characteristics of the North Dakota health insurance market.
   a. North Dakota's health insurance market.
   b. North Dakota's pharmacy ownership law.
   c. Section 54-52.1-04.16, created by House Bill No. 1374.
   d. Prescription drug carve-out considerations based on the North Dakota health insurance market.
2. Prescription drug market trends and management strategies.
   a. Rising health care costs and the impact of prescription drugs.
   b. Chronic disease.
   c. Specialty drugs.
   d. Tools to manage appropriate drug utilization and control costs.
   e. Prescription drug carve-out considerations based on prescription drug market trends and utilization management strategies.
3. Fully insured and self-insured contracts.
   a. Fully insured contracts.
   b. Self-insured contracts.
   c. Stop-loss insurance.
   d. Prescription drug carve-out considerations based on insurance contract funding options.
4. Prescription drug contracts.
   a. Financial terms.
   b. Additional components of cost.
   c. Spread pricing contracts.
   d. Passthrough contracts.
   e. Hybrid and alternative contracts.
   f. Prescription drug carve-out considerations based on prescription drug pricing and contracts.
5. Pharmacy benefit managers and carve-out trends.
   a. Pharmacy benefit managers.
   b. Pharmacy benefit carve-out trends.
   c. Considerations based on carve-out prescription drug trends and shifting alignments between PBMs and health insurers.

Study Findings

The study indicated any considerations for transitioning from the fully insured uniform group insurance program to a carve-out prescription drug program would be based on the availability and feasibility of different options. The competitive procurement process for the uniform group insurance program will highlight the relative importance of each consideration in the context of the alternatives available to PERS. The following is a summary of the considerations outlined in the study:

- A carve-out prescription drug plan likely would require a change to self-insurance for prescription drugs. Fully insured, carve-out prescription drug benefits are not commonly available in the market. The competitive procurement will determine the insurance options available for the 2021-23 biennium.
- Carving out the pharmacy benefits allows for greater flexibility to procure benefits arrangements determined to be in the best interest of the state. Under the current arrangement, the PERS Board selects the insurer that presents the best overall value for medical and pharmacy, even though the best value for medical and pharmacy may not necessarily be the same provider. Carving out the prescription drug benefit gives the PERS Board the flexibility to select the best value for each benefit.
- Contracting for carve-out pharmacy benefits under a self-insured plan allows for more choice in administrators. The insurance market in North Dakota is concentrated and most commercially insured business in the state is administered by Blue Cross Blue Shield of North Dakota or Sanford Health Plan. There are many PBMs that administer self-insured benefit programs which do not offer fully insured options or medical benefits.

- Carving out prescription drug benefits allows for more control of aspects of the prescription drug plan. As described by PBC in its testimony to the Health Care Reform Review Committee, carving out the prescription drug benefit will give the PERS Board more control over the prescription drug contract, formulary, and clinical management programs.
- Self-insured, carve-out, prescription drug benefits allow for greater visibility into costs. Most fully insured arrangements do not provide detailed cost data and financial information because the insurer assumes all the risk. Self-insured arrangements offer a higher degree of control and visibility into the underlying cost components of the contract. North Dakota law mandates access to prescription drug financial information regardless of the insurance arrangement. Due to the state law requirements, some insurers may not offer fully insured insurance options, or compliant fully insured options, for the uniform group insurance program request for proposal.
- A self-insured, carve-out, prescription drug plan would eliminate the downside risk protection of the modified fully insured contract. The modified fully insured arrangement with gain-sharing offers the advantage of fixed monthly premiums and no risk of loss if claims exceed premiums. A self-insured plan would require the state to assume all claims risk or purchase stop-loss insurance to insure against large claim losses.
- A self-insured, carve-out, prescription drug plan would result in more claims volatility than the modified fully insured contract. Prescription drug costs continue to rise, driven by the prevalence of chronic conditions and specialty drugs that treat high-cost, complex conditions. Additionally, market events such as Coronavirus (COVID-19) could have a dramatic impact on claims costs. The size of the PERS population will help minimize the volatility associated with large claims or unpredictable risk; however, claims under a self-insured contract will fluctuate more than a fixed premium agreement.
- Reserve funding may need to be increased in a self-insured, carve-out, prescription drug arrangement. The state will need to build a reserve fund for fluctuations in claims, costs, and expenses. Under current statute, the balance amount would need to be between 2 and 4 months of expected claims. Depending on the funding required and the availability of funds, higher premiums may be necessary to build the reserve.
- Stop-loss insurance may introduce new costs to the plan. Under a self-insured plan, stop-loss insurance could be purchased to mitigate some of the risk of large claims. Given the size of PERS and tolerance for risk, stop-loss insurance may not be necessary. If PERS implements a self-insured, carve-out, prescription drug plan while maintaining a fully insured medical plan, stop-loss coverage options may be limited or unavailable.
- Direct or indirect carve-out costs may be incurred. It is common for insurers and administrators to charge carve-out fees as a disincentive to carving-out the prescription drug benefit. Fees may include increased medical premiums, higher medical administrative service fees, file feed charges, and implementation fees.
- A carve-out may add administrative complexity for PERS. Carving-out the prescription drug benefit to a separate vendor may create the need to add resources, including additional personnel, to manage the third party. A carve-out prescription drug plan typically requires a separate contract, separate account and customer service teams, separate invoicing and financial requirements, separate reporting systems, and separate programs and services. Carving out also likely requires additional administrative tasks such as sharing additional claims and eligibility files, coordinating plan documents, monitoring, and reconciling separate financial reporting. The Public Employees Retirement System also supports a variety of wellness and disease management programs that are reliant on data and collaboration with the medical and prescription drug insurer which would need to be replicated in a carve-out arrangement. These additional administrative needs likely would result in PERS requiring additional staff.
- Accumulator integration for high-deductible plans would require additional coordination. Plan designs that feature combined medical and prescription drug deductibles and out-of-pocket maximums (most frequently high-deductible health plans) require careful tracking to accurately account for member out-of-pocket payments. In a carve-out prescription drug program, file feeds with claims information need to be exchanged regularly between the medical and prescription drug plan to track these accumulators. Most medical and prescription drug administrators can integrate these accumulator files but updates to member accumulators may be slower than if the medical and prescription drug benefits are combined under a single insurer.
- A carve-out may impact clinical integration. A carve-out contract could result in less clinical integration between the medical and prescription drug administrators. Insurers combine medical and pharmacy data to monitor for issues, such as gaps in care; adherence; fraud, waste, and abuse; track health outcomes; and identify potential risks. Less integration may create challenges in combining data efficiently and coordinating between medical and prescription drug administrators to achieve clinical outcomes. Plan sponsors can mitigate some of the risk of reduced clinical integration by proactively engaging the medical and prescription drug administrators to support clinical integration through contractual, reporting, and service level agreements.
- Delivering an integrated benefits experience to members may be more difficult in a carve-out arrangement. Carving out the prescription benefit has an impact on the plan member experience. Members may have different identification cards, different mobile applications and websites for each vendor, may need to contact different

service teams, and may receive different communications. Members will need information on how their benefits work when administered by different companies, as well as support for different administrative policies under each vendor agreement. It is also important to align benefit policies, including coverage designs, rules, requirements, and payment procedures across medical and prescription drug programs. This is particularly important for patients that receive treatment that could be paid under the medical or the prescription drug benefit, like cancer.

Testimony and Committee Considerations

Pharmacists

In addition to receiving the report from Deloitte Consulting, LLP, the committee received testimony from a representative of the North Dakota Pharmacists Association in response to the report. The testimony indicated the association does not take a position on whether PERS should remain fully insured or move to a self-insured model.

The committee received testimony indicating independent pharmacies in the state do not have the same bargaining power as large chain pharmacies and, as a result, independent pharmacies are reimbursed less than the larger pharmacies. Additionally, under the current PERS health benefit carrier there have been two rate cuts to pharmacies resulting in PERS being the lowest payer for the majority of North Dakota pharmacies. Finally, with the exception of sole rural pharmacies, the professional dispensing rate paid to pharmacists essentially has been eliminated under the PERS PBM arrangement.

The committee also received testimony indicating a primary reason for the upward trend in drug costs is the cost of specialty drugs. The amount the PERS population spends on specialty drugs for inflammatory conditions and cancer is higher than the general population. Testimony indicated ways to help reduce specialty drug costs include pinning down a specialty drug definition that is not vague by design, negotiating certain price guarantees or discounts from the PBM, and eliminating spread pricing on specialty drugs.

Testimony provided there is little to no transparency regarding prescription drug discounts and PERS has no way of verifying if it actually is getting a good deal. The pharmacy benefits manager controls the maximum allowable cost list for generic drugs and often pays the pharmacy from one list but bills the employer from a completely different drug pricing list. Additionally, PBMs are sophisticated and formulate forms of income or financial incentive classified as something other than a rebate to reduce the total amount of rebate the PBMs have to provide to insurers or plan sponsors.

Neighboring States

The committee received information regarding the public employee pharmacy benefit structure of Minnesota, Montana, and South Dakota. All three states have a self-insurance plan with a pharmacy carve-out.

Bill Draft

The committee considered a bill draft that would provide PERS the flexibility to purchase stop-loss insurance for self-funded pharmacy benefits. Testimony regarding the bill draft indicated the bill draft is necessary because the melding of the language in House Bill No. 1028 and Senate Bill No. 2045 resulted in the unintended consequence of prohibiting PERS from making individual stop-loss coverage for prescription drug benefits a part of a self-insurance health plan.

Recommendation

The committee recommends a bill draft to provide PERS the flexibility to purchase stop-loss insurance for self-funded pharmacy benefits.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN LEGISLATIVE PROPOSALS

The committee established April 1, 2020, as the deadline for submission of retirement, health, and retiree health proposals; however, extended the timeline for bill drafts recommended by Legislative Management interim committees. The deadline is intended to provide the committee and the consulting actuary of each affected retirement, health, or retiree health program sufficient time to discuss and evaluate the proposals. The committee allowed legislators and those agencies entitled to the bill introduction privilege to submit proposals for consideration. The committee recognized the committee retains the authority to waive this self-imposed deadline. The committee reviewed each submitted proposal and received testimony from interested persons.

Under Section 54-35-02.4, each retirement, insurance, or retiree insurance program is required to pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program. The committee referred the submitted legislative proposals to the affected retirement or insurance program and requested the program authorize the preparation of actuarial reports. For technical comments, PERS used the actuarial services of Gabriel, Roeder, Smith & Company (GRS) to evaluate proposals that affected retirement programs and the services of Deloitte Consulting, LLP to evaluate proposals that affected the public employees health benefits program. For technical comments, TFFR used the actuarial services of The Segal Group, Inc., in evaluating proposals that affect TFFR.

The committee obtained written actuarial information on each proposal over which the committee took jurisdiction. In evaluating each proposal, the committee considered the proposal's actuarial cost impact; testimony by retirement and health insurance program administrators and testimony by interested persons; the impact on the general fund or special funds and on the affected retirement program; and other consequences of the proposal or alternatives to the proposal. Based on these factors, the committee makes a favorable recommendation, unfavorable recommendation, or no recommendation on each proposal.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to each proposal introduced. Each sponsor is responsible for securing introduction of the proposal in the 67th Legislative Assembly.

Teachers' Fund for Retirement

The following is a summary of the proposal affecting TFFR over which the committee took jurisdiction, a summary of the actuarial analysis, and the committee's action on the proposal:

Bill No. 233

Sponsor: TFFR

Proposal: Provides the age at which TFFR plan participants need to take required minimum distributions is 72.

Actuarial analysis: There is no actuarial impact.

Committee report: Favorable.

Public Employees Retirement System

The following is a summary of the proposals primarily affecting PERS over which the committee took jurisdiction, a summary of the actuarial analysis, and the committee's action on each proposal:

Bill No. 49

Sponsor: Senator Tim Mathern

Proposal: Provides requirements for health insurance policies if the federal Affordable Care Act is repealed.

Actuarial analysis: The report provided a section-by-section analysis of the bill draft.

- Cost-sharing limits: No actuarial impact.
- Out-of-pocket limits: These changes will have some actuarial impact; however, the magnitude of the impact would need to be evaluated at the time of the plan change and will depend on the specific out-of-pocket limits that are set and other variables.
- Premium rates: More detail regarding how this reasonability requirement would be evaluated is required before any determination on potential actuarial impact to the PERS plan can be estimated.
- Premium rate factors: No actuarial impact.
- Rating variations: The PERS rate structure would need to be adjusted to comply with this proposed section. This could be accomplished without an aggregate actuarial impact to the plan; however, rates for individual enrollees would change.
- Rating variations: Likely no actuarial impact.

Committee report: The committee moved to delay making a recommendation to allow the sponsor the opportunity to revise the bill draft.

Bill No. 55

Sponsor: Representative Mike Schatz

Proposal: Provides a health insurance policy that covers an annual physical examination must allow for a physical examination that meets the requirements for a federal Department of Transportation physical examination.

Actuarial analysis: The potential cost impact to the uniform group health insurance program would likely be insignificant.

Committee report: Favorable.

Bill No. 68

Sponsor: Representative Marvin E. Nelson

Proposal: Provides PERS prescription drug benefits coverage must include certain drugs imported from Canada.

Actuarial analysis: Little if any potential savings could be realized by the uniform group health insurance program; therefore, unable to quantify an expected actuarial impact to the program.

Committee report: No recommendation.

Bill No. 87

Sponsor: PERS

Proposal: Provides for a 1.95 percent increase in the employer contribution for the PERS main and defined contribution retirement plans.

Actuarial analysis: The funded ratio of the main plan is projected to reach 100 percent in approximately 2062 and will provide additional retirement income to members of the defined contribution plan.

Committee report: No recommendation.

Bill No. 88

Sponsor: PERS

Proposal: Provides for a 2 percent increase in the employer and employee contribution for the PERS main and defined contribution retirement plans.

Actuarial analysis: The funded ratio of the main plan is projected to reach 100 percent in 2062 and will provide additional retirement income to members of the defined contribution plan.

Committee report: No recommendation.

Bill No. 89

Sponsor: PERS

Proposal: Provides for a 5.12 percent increase in the employer and employee contribution for the PERS main and defined contribution retirement plans.

Actuarial analysis: The funded ratio of the main plan is projected to reach 100 percent in 2042 and will provide additional retirement income to members of the defined contribution plan.

Committee report: Favorable.

Bill No. 90

Sponsor: PERS

Proposal: Provides for increases in the employer contribution for the Highway Patrolmen's retirement system.

Actuarial analysis: The funded ratio of the Highway Patrolmen's retirement system is projected to reach 100 percent in 2107.

Committee report: Favorable.

Bill No. 91

Sponsor: PERS

Proposal: Provides for a penalty for late payments or failures to follow required PERS processes.

Actuarial analysis: For the retirement plans, since the penalty would be an addition to already established reporting penalties, the impact on administrative costs from an actuarial perspective likely would be de minimis. For the uniform group insurance plans, although late payment fees may have a minor impact on plan reserves, there is no actuarial impact on the health plan itself.

Committee report: Favorable.

Bill No. 92

Sponsor: PERS

Proposal: Provides for technical corrections and updates to PERS laws.

Actuarial analysis: There is no actuarial impact.

Committee report: Favorable.

Bill No. 93

Sponsor: PERS

Proposal: Provides an exception for PERS Medicare Part D pharmacy benefits requirements.

Actuarial analysis: Exempting the Part D plan from the transparency requirements may result in the receipt of requests for proposals from more PBMs during a procurement.

Committee report: Favorable.

Bill No. 94

Sponsor: PERS

Proposal: Provides for the assessment of administrative expenses for the PERS deferred compensation plan.

Actuarial analysis: There is no actuarial impact.

Committee report: Favorable.

Bill No. 95

Sponsor: PERS

Proposal: Provides for a 1 percent increase in the employer and employee contribution for the PERS retirement main and defined contribution plans.

Actuarial analysis: The funded ratio of the main plan is projected to reach 100 percent in 2065 and will provide additional retirement income to members of the defined contribution plan.

Committee report: Favorable.

Bill No. 135

Sponsor: Representative George Keiser

Proposal: Provides for continued eligibility for health benefits following separation from employment in certain circumstances.

Actuarial analysis: No analysis received.

Committee report: The committee moved to delay making a recommendation to allow the sponsor the opportunity to revise the bill draft.

Bill No. 148

Sponsor: Representative Jim Kasper

Proposal: Provides the Employee Benefits Programs Committee makes contract determinations for PERS uniform group insurance plans.

Actuarial analysis: No actuarial impact.

Committee report: Unfavorable.

Bill No. 170

Sponsor: Legislative Management

Proposal: Provides PERS broader discretion to purchase stop-loss insurance coverage for a PERS self-insurance health plan.

Actuarial analysis: Any specific actuarial impact due to the purchase of stop-loss insurance would need to be evaluated based on variables such as the stop-loss deductible level, contract type, etc.

Committee report: Favorable.

Bill No. 183

Sponsor: Senator Mathern

Proposal: Provides maximum out-of-pocket costs for diabetes drugs and supplies for health insurance policies.

Actuarial analysis: No analysis received.

Committee report: No recommendation until actuarial analysis received.

Bill No. 202

Sponsor: Representative Lefor

Proposal: Provides an increase in the employer contribution for the PERS main retirement plan and provides for a cash infusion to the plan.

Actuarial analysis: No analysis received.

Committee report: The committee moved to delay making a recommendation to allow the sponsor the opportunity to revise the bill draft.

ADDITIONAL COMMITTEE RESPONSIBILITIES

Recruitment and Retention Bonuses

Pursuant to Section 54-06-31, the committee received periodic reports from the OMB Human Resource Management Services Division on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. During the 2017-19 biennium:

Agency	2017-19 Agency Authorized Full-Time Equivalent Positions	July 1, 2017, to June 30, 2019 (Biennium Total)					
		Recruit		Referral		Retain	
		Number	Amount	Number	Amount	Number	Amount
Department of Agriculture	73.00					22	$185,000
Bank of North Dakota	181.50	1	$3,125			15	78,117
Department of Commerce	66.40					3	10,500
Department of Corrections and Rehabilitation	845.29	3	3,750	15	$3,000	1	10,000
State Department of Health	364.00	2	8,609			23	144,231
Highway Patrol	204.00			2	1,000		
Department of Human Services	2,162.23	172	488,825			57	418,500
Information Technology Department	344.30	8	19,000			2	19,000
Industrial Commission/ Department of Mineral Resources	110.25					182	685,999
Commission on Legal Counsel for Indigents	40.00					4	23,180
Office of Management and Budget	117.00					6	15,000
Department of Public Instruction	91.75	1	2,000			4	17,500
Retirement and Investment Office	19.00					8	39,696
State Auditor's office	56.00					4	12,000
State Treasurer's office	7.00					1	8,036
Department of Trust Lands	31.00					1	6,600
Department of Veterans' Affairs	7.00					2	7,649
Total		187	$525,309	17	$4,000	335	$1,681,008

For the 1st year of the 2019-21 biennium:

Agency	2019-21 Agency Authorized Full-Time Equivalent Positions	July 1, 2019, to June 30, 2020 (1 Fiscal Year)					
		Recruit		Referral		Retain	
		Number	Amount	Number	Amount	Number	Amount
Bank of North Dakota	181.50					11	$91,443
Department of Corrections and Rehabilitation	899.79	26	$27,250	16	$6,550	1	4,126
Department of Environmental Quality	165.50	2	12,500			10	64,250
Department of Financial Institutions	31.00					5	30,157
Governor's office	18.00	1	1,000				
Highway Patrol	197.00	8	20,000				
Department of Human Services	2,230.23	101	378,808			12	84,138
Industrial Commission/ Department of Mineral Resources	112.25					93	358,371
Information Technology Department	402.00	10	20,500			77	183,209
Insurance Department	41.00					2	5,500
Commission on Legal Counsel for Indigents	40.00					1	(3,920)
Office of Management and Budget	112.00					1	(2,083)
Parks and Recreation Department	61.50	1	5,000				
Retirement and Investment Office	20.00	1	5,000				
State Auditor's office	58.00					7	17,400
Department of Trust Lands	28.00					1	(3,850)
Workforce Safety and Insurance	260.14	2	4,596	4	2,000		
Total		152	$474,654	20	$8,550	221	$828,741

Service Awards, Tuition, and Professional Organizations

In accordance with Sections 54-06-32, 54-06-33, and 54-06-34, the OMB Human Resource Management Services Division reported for the 2017-19 biennium, state employee service awards totaled $483,917.73; employer-paid costs of training or educational courses, including tuition and fees, totaled $6,461,975.90; and employer-paid professional organization membership and service club dues for individuals totaled $1,352,073.54. The following schedule is a summary of the information presented for the 2017-19 biennium:

Agency	2017-19 Authorized Full-Time Equivalent Positions	State Employee Service Awards	Employer-Paid Costs of Training or Educational Courses, Including Tuition and Fees	Employer-Paid Professional Organizational Membership and Service Club Dues for Individuals
10100 Governor's office	18.00		$1,319.00	$760.00
10800 Secretary of State	32.00	$1,950.00	1,206.74	11,900.00
11000 Office of Management and Budget	117.00	9,547.87	11,477.30	7,244.03
11200 Information Technology Department	344.30	31,532.80	461,246.10	65,970.50
11700 State Auditor's office	56.00	5,172.00	17,320.91	6,033.00
12000 State Treasurer	7.00	125.00	880.52	5,526.65
12500 Attorney General	237.00			30,128.00
12700 Tax Department	133.00	10,254.50	47,414.40	4,925.00
18000 Judicial branch	355.50	18,737.29	121,795.39	334,693.30
18800 Commission on Legal Counsel for Indigents	40.00		2,121.00	18,958.19
19000 Retirement and Investment Office	19.00	1,831.45	30,976.45	13,586.00
19200 Public Employees Retirement System	34.50	3,300.90	17,219.30	22,590.98
20100 Department of Public Instruction	91.75	12,551.59	7,131.81	42,281.75
22600 Department of Trust Lands	31.00	4,068.04	25,392.99	3,440.00
25000 State Library	28.75	1,179.51		19,025.00
25200 School for the Deaf	45.61		791.96	
25300 North Dakota Vision Services - School for the Blind	28.50	206.95	12,104.00	1,380.00
27000 Department of Career and Technical Education	24.50	1,938.67		6,315.00
30100 State Department of Health	364.00	20,594.00	164,462.69	68,477.85
31300 Veterans' Home	120.72	3,350.00	9,391.25	2,010.00
31600 Indian Affairs Commission	4.00		272.64	
32100 Department of Veterans' Affairs	7.00		375.00	
32500 Department of Human Services	2,162.23	110,227.00	406,983.39	83,444.31
36000 Protection and Advocacy Project	27.50	2,691.19		
38000 Job Service North Dakota	181.61	16,927.00	19,256.86	918.00
40100 Insurance Department	46.00	3,814.75	26,648.27	8,513.00
40500 Industrial Commission	110.25	4,551.50	4,125.18	35,000.00
40600 Department of Labor and Human Rights	14.00	954.95	6,305.00	1,438.00
40800 Public Service Commission	45.00	2,859.50	8,170.95	2,797.53
41200 Aeronautics Commission	7.00	25.00		
41300 Department of Financial Institutions	30.00		3,003.32	
41400 Securities Department	9.00		1,000.00	3,280.00
48500 Workforce Safety and Insurance	260.14	20,793.29	275,356.45	70,197.03
50400 Highway Patrol	204.00		536,299.19	25,947.00
53000 Department of Corrections and Rehabilitation	845.29	52,384.81	263,805.90	121,867.96
54000 Adjutant General	234.00	14,884.50	3,454,868.52	26,397.00
60100 Department of Commerce	66.40	3,497.30	10,252.26	1,878.00
60200 Department of Agriculture	73.00	2,931.00	20,721.02	51,115.10
60700 Milk Marketing Board		600.00		
61600 State Seed Department		901.25	1,100.00	2,050.00
67000 North Dakota Racing Commission	2.00	179.95		
70100 State Historical Society	75.00	9,590.69	33,569.10	9,085.00
72000 Game and Fish Department	163.00	15,950.94	7,052.52	152,163.12
75000 Parks and Recreation Department	62.50	8,389.59	8,467.44	32,045.74
77000 State Water Commission	93.00	5,371.00	4,903.88	13,346.00
80100 Department of Transportation	1,047.00	80,051.95	437,187.20	45,345.50
Total		$483,917.73	$6,461,975.90	$1,352,073.54

Compliance with Federal Law

Teachers' Fund for Retirement

The TFFR Board of Trustees reported action by the committee was required under Section 15-39.1-35 to comply with applicable federal requirements as a result of the federal Setting Every Community Up for Retirement Enhancement (SECURE) Act.

The committee received background on the SECURE Act. The Act increases the age at which retirement plan participants need to take required minimum distributions from 70 1/2 to 72. The committee authorized TFFR to amend Section 15-39.1-10 to implement the SECURE Act. In compliance with Section 15-39.1-05.2, TFFR notified the committee of its intent to introduce legislation to comply with the SECURE Act.

Public Employees Retirement System

The PERS Board reported action by the committee was not required under Section 54-52.1-08.2, regarding uniform group insurance, to approve terminology adopted by the PERS Board to comply with applicable federal requirements. However, the committee received a report from the PERS Board under Sections 39-03.1-29 and 54-52-23, regarding the retirement system, to approve terminology adopted by the board to comply with federal requirements under the SECURE Act. The committee authorized PERS to amend Sections 39-03.1-11.2 and 54-52-28 to implement the SECURE Act. The Public Employees Retirement System notified the committee of its intent to introduce legislation to comply with the SECURE Act.

Firefighters Relief Associations

The committee was not notified by any firefighters relief association pursuant to Section 18-11-15(5), which requires the committee to be notified by any firefighters relief association that implements an alternate schedule of monthly service pension benefits for members of the association.

REPORTS

Retirement and Investment Office

During the interim the committee received periodic reports from the Retirement and Investment Office regarding investments of the State Investment Board. During the fiscal year ending June 30, 2020, the State Investment Board's client investments increased by over $1.6 billion, to exceed $16.3 billion.

Preliminary net investment returns for the State Investment Board's largest 5 clients for fiscal year ended June 30, 2020, are as follows:

	Teachers' Fund for Retirement	Public Employees Retirement System	Legacy	Workforce Safety and Insurance	Budget Stabilization
Net returns for 1 year ended December 31, 2019	18.0%	18.0%	18.1%	13.6%	4.7%
Net returns for quarter ended September 30, 2019	0.4%	0.4%	1.0%	1.7%	0.9%
Net returns for quarter ended December 31, 2019	5.6%	5.7%	5.2%	2.6%	0.8%
Net returns for quarter ended March 31, 2020	(12.0%)	(12.1%)	(12.7%)	(6.1%)	(3.6%)
Net returns for quarter ended June 30, 2020	10.8%	10.8%	12.3%	8.1%	4.3%
Preliminary net returns fiscal year ended June 30, 2020	3.4%	3.4%	4.2%	6.0%	2.3%

For the 10 years ending June 30, 2020, the PERS plan earned a net investment return of 8.38 percent, exceeding its performance benchmark of 7.94 percent by 0.44 percent and its long-term expected return assumption of 7.00 percent. For the 10 years ending June 30, 2020, TFFR earned a net investment return of 8.53 percent, exceeding its performance benchmark of 7.90 percent by 0.63 percent and its long-term expected return assumption of 7.25 percent.

In addition, the committee received testimony regarding the effect COVID-19 had on the market and investments. During the 1st quarter of 2020, the market experienced the sharpest and fastest equity market decline ever.

Public Employees Retirement System

Health Benefits Request for Proposal

During the interim, the committee received periodic reports on the status of the PERS health benefits plan. The PERS Board issued a health benefits request for proposal in June 2020; received 14 eligible proposals from five vendors--Blue Cross Blue Shield of North Dakota, Sanford Health Plan, and three PBMs; reviewed technical and financial analyses; interviewed three vendors--Blue Cross Blue Shield of North Dakota, Sanford Health Plan, and Express Scripts; and on October 19, 2020, voted to award a fully insured hybrid contract to Sanford Health Plan. The proposed contract will provide for bundled medical and pharmacy benefits with a profit-sharing provision, will continue with the current plan design, and will provide for a .1 percent increase in premium.

The committee received testimony the bid for fully insured medical and self-insured pharmacy benefits was $30 million more expensive than the selected bid, and the bid for self-insured medical and pharmacy benefits was $90 million more expensive than the selected bid.

Experience Study

Under Section 54-52-04(4), PERS conducts an actuarial experience study once every 5 years which addresses mortality, retirement, employment turnover, and other items required by the PERS Board and recommends actuarial tables for use in valuation and in calculating actuarial equivalent values based on such investigation. According to testimony from the PERS Board, the board, at its April 15, 2020, meeting, adopted the following 10 recommendations of the experience study conducted by GRS for the period July 1, 2014, to July 1, 2019:

1. Decrease the price inflation from 2.50 to 2.25 percent, bringing the assumption closer to recent inflation levels and to levels expected in the financial markets.
2. Decrease the investment return for PERS main and Highway Patrolmen's retirement system from 7.5 to 7.0 percent, as the probability of exceeding 7.5 percent over the next 20 years is approximately 37.0 percent and the probability of exceeding 7.0 percent over the next 20 years improves to approximately 44.00 percent.
3. Decrease the investment return of the RHIC plan from 7.25 to 6.50 percent, as the probability of exceeding 7.25 percent over the next 20 years is approximately 31.00 percent and the probability of exceeding 6.50 percent over the next 20 years improves to approximately 42.00 percent. Not factored into this analysis is the current market and that the RHIC was closed to new hires after December 31, 2019.
4. Decrease the investment return of the Job Service plan from 4.75 to 4.25 percent, as the probability of exceeding 4.75 percent over the next 20 years is approximately 39.00 percent and the probability of exceeding 4.25 percent over the next 20 years improves to approximately 54.00 percent. The Job Service plan is funded at 150.00 percent.
5. Decrease the wage growth assumption from 3.75 to 3.50 percent and for judges' retirement system to decrease from 3.25 to 3.00 percent.
6. Decrease salary increase assumptions for all plans as observed salary increases during the past 5 years were lower than predicted by current assumptions.
7. Recommend separate rates for retirement based on whether a member meets the rule of 90, 85, or 80. For all plans except the Highway Patrolmen's retirement system, recommend an overall decrease in retirement rates to reflect observed experience; and for the Highway Patrolmen's retirement system, recommend an overall increase in retirement rates to reflect observed experience.
8. Recommend an overall increase in turnover rates to reflect observed experience as turnover rates are based on both age and service, with higher turnover rates during the first 5 years of service.
9. Recommend decreasing the current rates for disability to reflect observed experience as the actual number of disabilities during the past 5 years was lower than predicted by current assumptions.
10. Recommend changing from the RP-2000 Mortality Tables to the newly issued Pub-2010 Public Retirement Plans Mortality Tables with rates projected from 2010 using projection scale MP-2019. For postretirement mortality rates:
    a. Male proposed rates:
        (1) Higher for ages under 65; and
        (2) Lower for ages 65 and up;
    b. Female proposed rates:
        (1) Higher for ages under 65 and over 80; and
        (2) Lower for ages 65 to 80.

    It was noted that the new tables are based entirely on public employees.

Additionally, GRS proposed and the PERS Board adopted the following methodology assumption for RHIC participation:

- Incorporate participation rates for current active members--current assumption is 100 percent;
- Incorporate participation rates for retired members eligible but not currently receiving RHIC benefits--current assumption is 100 percent; and
- Include liabilities for current terminated vested members and use same participation assumptions as those used for active members.

Finally, GRS proposed and the PERS Board adopted the continued use of the actuarial cost method, amortization method, asset smoothing method, administrative expense assumption, percent married assumption, form of payment assumptions, and pay increase timing assumption and changing the assumption that retirements occur at the beginning of the year to the middle of the year.

The experience study report indicated the changes in assumptions would have the following impact on each of the funds in the PERS retirement system:

	Main System	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability ($000's)	$4,136,253	$4,317,882
Actuarial value of assets ($000's)	$2,949,967	$2,949,967
Unfunded actuarial accrued liability ($000's)	$1,186,286	$1,367,915
Funded ratio	71.30%	68.30%
Contributions (percent of pay)		
Statutory contribution rate	14.12%	14.12%
Actuarial contribution rate	19.22%	20.03%
Statutory rate excess/deficiency	(5.10%)	(5.91%)
Amortization period from statutory rate (years)	Infinite	Infinite

	Judges	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability ($000's)	$44,559	$48,695
Actuarial value of assets ($000's)	$55,189	$55,189
Unfunded actuarial accrued liability ($000's)	($10,630)	($6,494)
Funded ratio	123.90%	113.30%
Contributions (percent of pay)		
Statutory contribution rate	25.52%	25.52%
Actuarial contribution rate	10.83%	17.15%
Statutory rate excess/deficiency	14.69%	8.37%
Amortization period from statutory rate (years)	None	None

	Public Safety with Prior Main System Service	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability ($000's)	$79,501	$86,617
Actuarial value of assets ($000's)	$66,813	$66,813
Unfunded actuarial accrued liability ($000's)	$12,688	$19,804
Funded ratio	84.00%	77.10%
Contributions (percent of pay)		
Statutory contribution rate	15.35%	15.35%
Actuarial contribution rate	13.54%	15.21%
Statutory rate excess/deficiency	1.81%	0.14%
Amortization period from statutory rate (years)	8.5	18.6

	Public Safety without Prior Main System Service	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability ($000's)	$9,027	$9,776
Actuarial value of assets ($000's)	$9,913	$9,913
Unfunded actuarial accrued liability ($000's)	($886)	($137)
Funded ratio	109.80%	101.40%
Contributions (percent of pay)		
Statutory contribution rate	13.43%	13.43%
Actuarial contribution rate	11.87%	13.49%
Statutory rate excess/deficiency	1.56%	(0.06%)
Amortization period from statutory rate (years)	None	None

	Highway Patrol	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability ($000's)	$106,315	$113,171
Actuarial value of assets ($000's)	$80,902	$80,902
Unfunded actuarial accrued liability ($000's)	$25,413	$32,269
Funded ratio	76.10%	71.50%
Contributions (percent of pay)		
Statutory contribution rate	33.00%	33.00%
Actuarial contribution rate	42.68%	47.72%
Statutory rate excess/deficiency	(9.68%)	(14.72%)
Amortization period from statutory rate (years)	Infinite	Infinite

	Job Service	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability ($000's)	$66,300	$67,104
Actuarial value of assets ($000's)	$97,808	$97,808
Unfunded actuarial accrued liability ($000's)	($31,509)	($30,704)
Funded ratio	147.50%	145.80%
Contributions (percent of pay)		
Statutory contribution rate	7.00%	7.00%
Actuarial contribution rate	NA	NA
Statutory rate excess/deficiency	NA	NA
Amortization period from statutory rate (years)	None	None

	Retiree Health Insurance Credit	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability ($000's)	$217,831	$221,295
Actuarial value of assets ($000's)	$137,602	$137,602
Unfunded actuarial accrued liability ($000's)	$80,229	$83,693
Funded ratio	63.20%	62.20%
Contributions (percent of pay)		
Statutory contribution rate	1.14%	1.14%
Actuarial contribution rate	1.02%	1.14%
Statutory rate excess/deficiency	0.12%	0.00%
Amortization period from statutory rate (years)	15	20

PERS Main System Funding

The committee received testimony regarding the PERS main system funding history and potential options to reduce the main system unfunded liability. The following schedule shows the actuarial assets and liabilities of the PERS main system defined benefit plan since 2000:

Fiscal Year	Actuarial Assets	Actuarial Liabilities	Actuarial Surplus or (Unfunded Liability)	Actuarial Funded Ratio
2000	$1,009,744,796	$879,189,877	$130,554,919	114.8%
2001	$1,096,115,648	$993,851,809	$102,263,839	110.3%
2002	$1,129,697,099	$1,087,003,336	$42,693,763	103.9%
2003	$1,145,284,302	$1,170,477,887	($25,193,585)	97.8%
2004	$1,172,258,036	$1,250,849,240	($78,591,204)	93.7%
2005	$1,210,287,848	$1,333,491,341	($123,203,493)	90.8%
2006	$1,286,478,642	$1,450,113,412	($163,634,770)	88.7%
2007	$1,470,367,098	$1,575,666,628	($105,299,530)	93.3%
2008	$1,571,159,912	$1,700,171,588	($129,011,676)	92.4%
2009	$1,577,552,012	$1,861,032,305	($283,480,293)	84.8%
2010	$1,576,794,397	$2,156,560,553	($579,766,156)	73.1%
2011	$1,603,718,656	$2,284,199,019	($680,480,363)	70.2%
2012	$1,579,933,179	$2,442,299,210	($862,366,031)	64.7%
2013	$1,632,915,720	$2,650,525,018	($1,017,609,298)	61.6%
2014	$1,837,902,845	$2,866,511,290	($1,028,608,445)	64.1%
2015	$2,027,476,214	$2,976,071,808	($948,595,594)	68.1%
2016	$2,180,748,616	$3,299,381,100	($1,118,632,484)	66.1%
2017	$2,529,631,008	$3,618,083,973	($1,088,452,965)	69.9%
2018	$2,752,053,305	$3,841,701,179	($1,089,647,874)	71.6%
2019	$2,949,967,049	$4,136,252,987	($1,186,285,938)	71.3%

The committee received the following preliminary estimates on the effects of providing ongoing transfers to the PERS main system each biennium to reduce the unfunded liability:

Biennial Transfer Amount	Estimated Time to Become 100 Percent Funded		Estimated Total State Funds Transferred
	Bienniums	Years	
$10 million	20	40	$200 million
$20 million	16	31	$320 million
$25 million	14	28	$350 million
$30 million	13	26	$390 million
$40 million	12	23	$480 million
$50 million	10	20	$500 million
$75 million	8	16	$600 million
$100 million	7	13	$700 million

The committee received updated estimates indicating a one-time cash infusion of $1 billion would result in a PERS main system projected funding ratio of 100 percent within 20 years, and a one-time cash infusion of $775 million would result in full funding within 30 years. Possible funding sources identified to address the PERS main system shortfall included the general fund, budget stabilization fund, legacy fund, and strategic investment and improvements fund.